

Milton Grunwald (MG-0009)
Grunwald & Seman, PC
Attorneys for the Defendants
Hillside Auto Mall, Inc., Santander Consumer Funding 3, LLC
And Santander Consumer USA
T: 516-248-8889
E: mg@gslawyers.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ANGELO SPARACELLO,
VINCENZA INGRAO

Plaintiffs,

v.

HILLSIDE AUTO MALL, INC.
SANTANDER CONSUMER FUNDING 3, LLC
SANTANDER CONSUMER, USA,

Defendants

-----X

Docket No.: 14-CV-1450 (DLI/SMG)

**ANSWER TO THE COMPLAINT,
AFFIRMATIVE DEFENSES**

**(PURSUANT TO FRCP 38(B) THE
ANSWERING DEFENDANTS
DEMAND A TRIAL BY JURY)**

The Answering Defendants, HILLSIDE AUTO MALL, INC., CONSUMER FUNDING 3, LLC and SANTANDER CONSUMER USA by and through its attorneys, GRUNWALD & SEMAN, P.C., as and for its Answer to the Plaintiff's Complaint, respectfully alleges as follows:

AS TO JURISDICTION AND VENUE

1. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "1" of the Plaintiff's Complaint and refer questions of fact and law are respectfully referred to this Honorable Court for determination.

2. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "2" of the Plaintiff's Complaint and refer questions of fact and law are respectfully referred to this Honorable Court for determination.
3. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "3" of the Plaintiff's Complaint

STATEMENT OF FACTS

4. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "7" of the Plaintiff's Complaint.
5. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "8" of the Plaintiff's Complaint.
6. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "9" of the Plaintiff's Complaint.
7. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "10" of the Plaintiff's Complaint.

8. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "11" of the Plaintiff's Complaint.
9. Denies each and every allegation contained in paragraphs numbered "12" of the Plaintiff's Complaint.
10. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "13" of the Plaintiff's Complaint.
11. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "14" of the Plaintiff's Complaint.
12. Denies each and every allegation contained in paragraphs numbered "15" of the Plaintiff's Complaint.
13. Denies each and every allegation contained in paragraphs numbered "16" except admits \$ 3,000,00 trade in would be given toward the purchase price as alleged in the Plaintiff's Complaint
14. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "17" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court.

15. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "18" of the Plaintiff's Complaint.
16. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "19" of the Plaintiff's Complaint.
17. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "20" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
18. Denies each and every allegation contained in paragraphs numbered "21" of the Plaintiff's Complaint.
19. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "22" of the Plaintiff's Complaint.
20. Denies each and every allegation contained in paragraphs numbered "23" of the Plaintiff's Complaint
21. Denies each and every allegation contained in paragraphs numbered "24" of the Plaintiff's Complaint
22. Denies each and every allegation contained in paragraphs numbered "26" of the Plaintiff's Complaint

23. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "27" except admits a contract was signed as alleged in the Plaintiff's Complaint.
24. Denies each and every allegation contained in Paragraphs numbered "28" of the Plaintiff's Complaint
25. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "29" of the Plaintiff's Complaint.
26. Denies Knowledge of Information sufficient to form a belief as to the truth or accuracy of the allegations set forth in Paragraphs numbered "30" of the Plaintiff's Complaint
- 27 Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "31" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court.
28. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "32" of the Plaintiff's Complaint.
29. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "33" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court.
30. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "34" of the Plaintiff's Complaint.

31. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "35" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
32. Denies each and every allegation contained in paragraphs numbered "36" of the Plaintiff's Complaint.
33. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "37" of the Plaintiff's Complaint.
34. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "38" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court.
35. Denies each and every allegation contained in paragraphs numbered "39" of the Plaintiff's Complaint
36. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "40" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
37. Denies each and every allegation contained in paragraphs numbered "41" of the Plaintiff's Complaint
38. Denies each and every allegation contained in paragraphs numbered "42" of the Plaintiff's Complaint.

39. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "43" of the Plaintiff's Complaint.
40. Denies each and every allegation contained in paragraphs numbered "44" of the Plaintiff's Complaint.

AS TO COUNT I
TRUTH IN LENDING ACT and REGULATIONS Z

41. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "44", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "45" of the Plaintiff's Complaint.
42. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "46" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
43. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "47" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
44. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "48" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court

45. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered “49” of the Plaintiff’s Complaint and respectfully refers questions of fact and law to this Honorable Court
46. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered “50” of the Plaintiff’s Complaint and respectfully refers questions of fact and law to this Honorable Court
47. Denies each and every allegations set forth in Paragraph numbered “52” of the Plaintiff’s Complaint.
48. Denies each and every allegations set forth in Paragraph numbered “53” of the Plaintiff’s Complaint.
49. Denies each and every allegations set forth in Paragraph numbered “54” of the Plaintiff’s Complaint.
50. Denies each and every allegations set forth in Paragraph numbered “55” of the Plaintiff’s Complaint.
51. Denies each and every allegations set forth in Paragraph numbered “56” of the Plaintiff’s Complaint.
52. Denies each and every allegations set forth in Paragraph numbered “57” of the Plaintiff’s Complaint.
53. Denies each and every allegations set forth in Paragraph numbered “58” of the Plaintiff’s Complaint.

AS TO COUNT 2
VIOLATIONS OF EQUAL CREDIT OPPORTUNITY ACT

54. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "58", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "59" to the Plaintiff's Complaint.
55. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "60" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
56. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "61" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
57. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "62" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
58. Denies each and every allegations set forth in Paragraph numbered "63" of the Plaintiff's Complaint
59. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "64" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court

60. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "65" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
61. Denies each and every allegations set forth in Paragraph numbered "66" of the Plaintiff's Complaint .and respectfully refers questions of fact and law to this Honorable Court
62. Denies each and every allegations set forth in Paragraph numbered "67" of the Plaintiff's Complaint .and respectfully refers questions of fact and law to this Honorable Court
63. Denies each and every allegations set forth in Paragraph numbered "68" of the Plaintiff's Complaint
64. Denies each and every allegations set forth in Paragraph numbered "69" of the Plaintiff's Complaint

AS TO COUNT III
FRAUD

65. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "69", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "70" fo the Plaintiff's Complaint.
66. Denies each and every allegations set forth in Paragraph numbered "71" of the Plaintiff's Complaint

- 67. Denies each and every allegations set forth in Paragraph numbered "72" of the Plaintiff's Complaint but admits the Plaintiffs are due a credit toward their purchase price in the amount of \$ 3,000.00 and have offered said funds to the Plaintiff which their legal counsel has rejected.
- 68. Denies each and every allegations set forth in Paragraph numbered "73" of the Plaintiff's Complaint
- 69. Denies each and every allegations set forth in Paragraph numbered "74" of the Plaintiff's Complaint
- 70. Denies each and every allegations set forth in Paragraph numbered "75" of the Plaintiff's Complaint

AS TO COUNT IV
FRAUD

- 71. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "75", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "76" of the Plaintiff's Complaint.
- 72. Denies each and every allegations set forth in Paragraph numbered "77" of the Plaintiff's Complaint
- 73. Denies each and every allegations set forth in Paragraph numbered "78" of the Plaintiff's Complaint
- 74. Denies each and every allegations set forth in Paragraph numbered "79" of the Plaintiff's Complaint

AS TO COUNT V
NEGLIGENCE & GROSS NEGLIGENCE
INCLUDING NEGLIGENT MISREPRESENTATION

75. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "79", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "80" of the Plaintiff's Complaint.
76. Denies each and every allegations set forth in Paragraph numbered "81" of the Plaintiff's Complaint
77. Denies each and every allegations set forth Paragraph numbered "82" of the Plaintiff's Complaint.

AS TO COUNT VI
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349

78. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "82", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "83" of the Plaintiff's Complaint.
79. Denies each and every allegations set forth in Paragraph numbered "84" of the Plaintiff's Complaint

80. Denies each and every allegations set forth in Paragraph numbered "85" of the Plaintiff's Complaint
81. Denies each and every allegations set forth in Paragraph numbered "86" of the Plaintiff's Complaint
82. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "87" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
83. Denies each and every allegations set forth in Paragraph numbered "88" of the Plaintiff's Complaint
84. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "89" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
85. Denies each and every allegations set forth in Paragraph numbered "90" of the Plaintiff's Complaint

AS TO COUNT VII
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(Unlawful False Advertising)

86. Repeats, reiterates and realleges each and every response to Paragraphs numbered "1" through "90", inclusive, of the Plaintiff's Complaint, with the same force and effect as though fully set forth herein, in response to Paragraph numbered "91" of the Plaintiff's Complaint.

87. Denies each and every allegations set forth in Paragraph numbered "92" of the Plaintiff's Complaint
88. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "93" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
89. Denies each and every allegations set forth in Paragraph numbered "94" of the Plaintiff's Complaint
90. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "95" of the Plaintiff's Complaint and respectfully refers questions of fact and law to this Honorable Court
91. Denies each and every allegations set forth in Paragraph numbered "96" of the Plaintiff's Complaint
92. Denies each and every allegations set forth in Paragraph numbered "97" of the Plaintiff's Complaint
93. Denies each and every allegations set forth in Paragraph numbered "98" of the Plaintiff's Complaint

COUNT VIII
ADDITIONAL CIVIL PENALTIES UNDER NEW YORK
GENERAL BUSINESS LAW §349-C
(Consumer Frauds against Elderly Persons)

94. Denies Knowledge of Information sufficient for form a belief as to the truth or accuracy of the allegations set forth as alleged in Paragraph numbered "99" of the Plaintiff's Complaint and respectfully refers questions of law and fact to this Honorable Court.

AS AND FOR A FIRST SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

95. Plaintiff fails to state causes of action for which relief may be granted against the Answering Defendants.

AS AND FOR A SECOND SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

96. Plaintiff has failed to plead their causes of action including Fraud with particularity as
Against the Answering Defendants

AS AND FOR A THIRD SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

97. That pursuant to 15 USC 1641(a), the Plaintiff's claim alleging violations of the Truth-in Lending Act, 15 USC §§1601 et seq. (TILA), cannot be brought against the Answering Defendant because there are no apparent violations on the face of the TILA disclosure statements provided to the Plaintiff.

AS AND FOR A FOURTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

98. If any damages were sustained by the Plaintiff, which damages are expressly denied, then all such damages will have been caused and brought about by the affirmative, active,

willful, reckless, negligent, wrongdoing of the Plaintiff, or its agents, without similar acts on the Part of the Answering Defendants.

AS AND FOR A FIFTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

99. That the Answering Defendants, their officers, agents, servants, and/or employees at all times mentioned in the Complaint, acted without malice, without intent to cause harm or injury, in good faith and with probable cause and justification and without such action having exceeded that which was required under the circumstances.

AS AND FOR A SIXTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

- 100 Any damages suffered by the Plaintiff were caused, in whole or in part, by its own negligence and/or lack of due diligence, misconduct and breach of express and implied contractual and statutory obligations, and any recovery must be diminished in proportion to that part of its damages so attributable to their culpable conduct.

AS AND FOR A SEVENTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

101. That the Plaintiff does not allege the Documents signed were false, but only that it was misled by the Defendants, the Answering Defendant cannot be held liable if there are no misrepresentations "apparent on its face" of the loan documents.

AS AND FOR A EIGHTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

102. The Plaintiffs failed to exercise, as mandated by law, good faith in its relationship with the Answering Defendants; thus should be barred from seeking any relief herein.

AS AND FOR A NINTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

103. The Plaintiff seeks to be unjustly enriched.

AS AND FOR A TENTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

104. The Plaintiff's claims are barred, in whole or in part, by the Statute of Frauds

AS AND FOR A ELEVENTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

105. The Plaintiff's claim is barred by virtue of his own bad faith and the doctrines of waiver, estoppel, laches, consent, ratification and acquiescence

AS AND FOR A TWELFTH SEPARATE
AFFIRMATIVE AND COMPLETE DEFENSE

- 106 The Answer Defendants, SANTANDER CONSUMER FUNDING 3, LLC and SANTANDER CONSUMER USA are holders in due course and bear no liability for the actions alleged in this complaint.

WHEREFORE, the Answering Defendants:

- [a] Deny the Allegations set forth in the Complaint; and
- [b] Deny the Plaintiffs are entitled to Judgment against the Answering Defendants on any of its causes of action; and
- [c] Deny the Plaintiff is entitled to any relief sought in the Complaint against the Answering Defendants; and
- [d] Demand Judgment dismissing the Complaint and an award of costs and disbursements of this action against adverse parties; and,
- [e] and for such other and further relief as this Court deems just and proper.

Dated: April 21, 2014
Garden City, New York

Respectfully submitted,

GRUNWALD & SEMAN, P.C.
Attorneys for the Defendants,
HILLSIDE AUTO MALL, INC.
SANTANDER CONSUMER FUNDING 3,LLC
SANTANDER CONSUMER USA,

/S/ _____
by Milton Grunwald, Esq. (MG-0009)
100 Garden City Plaza; Suite 203
Garden City, New York 11530
Telephone: 516-248-8889
mg@gslawyers.com

To: Ahmad Keshavarz
Attorney for the Plaintiff
THE LAW OFFICES OF AHMAD KESHAVARZ
16 Court Street, 26th Floor
Brooklyn, NY 11241-1026
Telephone: 718-522-7900
ahmad@NewYorkConsumerAttorney.com